

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
Plaintiff,

Case #16-CR-9-FPG

v.

DECISION AND ORDER

JAY NEAL,  
Defendant.

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Defendant Jay Neal is charged in eight counts of the Indictment with a variety of firearms and narcotics offenses. *See* ECF No. 10. By Order dated January 28, 2016, this case was referred to United States Magistrate Judge H. Kenneth Schroeder pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (b)(1)(B). Defendant has advanced three primary motions.

First, Defendant moved to suppress “any statements taken in violation of his Fifth Amendment rights,” although he did not identify any statement or dates the alleged statements were made. ECF No. 12 at 3. In response, the government has affirmed that it is not aware of any statements made to law enforcement by Defendant after his arrest. ECF No. 13 at 3.

Second, Defendant moved to suppress “evidence seized from him or from any area in which arguably he had a reasonable expectation of privacy,” ECF No. 17 at 2, but did not submit an affidavit in support of his application. The basis of Defendant’s suppression motion is his belief that law enforcement lacked probable cause to arrest him, after which they searched his person, on October 21, 2015.

Third, Defendant argued that Counts 1 and/or 5 of the Indictment should be dismissed as being either duplicitous or multiplicitous. ECF No. 12.

On March 3, 2017 and March 29, 2017, Magistrate Judge Schroeder issued his Reports and Recommendations on each of these motions (ECF Nos. 33, 36) which recommend denying each of Defendant's motions. Specifically, Magistrate Judge Schroeder recommends denying Defendant's motion to suppress statements as moot, since no statements exist; he recommends denying Defendant's motion to suppress physical evidence based on an alleged lack of probable cause to arrest as being without merit, in that law enforcement witnessed a hand to hand drug transaction between their confidential information and Defendant on the day before the arrest; and he finally recommends rejecting Defendant's multiplicity and duplicity arguments because it is well settled in the Second Circuit that a narcotics conspiracy is neither duplicitous nor multiplicitous of a substantive charge of maintaining or using a place to manufacture, store or distribute narcotics.

No objections have been filed to either of Magistrate Judge Schroeder's Reports and Recommendations, and the time to do so has now expired.

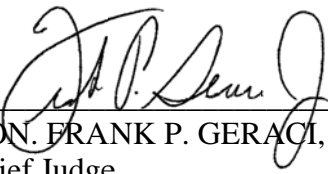
In reviewing a Report and Recommendation, this Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Since no objections were filed, this Court is not required to conduct a *de novo* review of Magistrate Judge Schroeder's Reports and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings"); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997) ("We have adopted the rule that failure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.").

Magistrate Judge Schroeder also reminded the parties of Fed. R. Crim. P. 59(a), stating that **“Failure to file objections within the specified time or to request and extension of such time waives the right to appeal the District Judge’s Order.”** ECF Nos. 33, 36 (emphasis in original).

Since no objections have been filed, the Court accepts and adopts the Reports and Recommendations filed by United States Magistrate Judge H. Kenneth Schroeder (ECF Nos. 33, 36) in their entirety, and Defendant’s motions to suppress and to dismiss (ECF Nos. 12, 17) are denied in all respects<sup>1</sup>.

IT IS SO ORDERED.

DATED: May 26, 2017  
Rochester, New York

  
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HON. FRANK P. GERACI, JR.  
Chief Judge  
United States District Court

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<sup>1</sup> Having reviewed the submissions in this case to date, the Court would still adopt Magistrate Judge Schroeder’s Reports and Recommendations in their entirety even if *de novo* review were required.